

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARSHALL E. BLOOMFIELD,

Petitioner-Judgment Creditor,

-against-

DERMOT MACSHANE

Respondent-Judgment Debtor,

and

SERGEANT'S BENEVOLENT ASSOCIATION  
ANNUITY FUND, THE CITY OF NEW YORK POLICE  
PENSION FUND, and THE FUND OFFICE OF LOCAL  
580 OF ARCHITECTURAL AND ORNAMENTAL  
IRON WORKERS,

Respondents.

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**NOTICE OF MOTION  
TO REMAND  
ACTION TO STATE  
SUPREME COURT**

Civil Action No.:  
07 CV 3934 (RJH)

**PLEASE TAKE NOTICE** that upon the annexed declaration of Keith M. Snow, dated June 19, 2007, and the exhibits annexed thereto, the accompanying memorandum of law, and upon all the papers and proceedings had herein, the undersigned will move this Court, before the Honorable Richard J. Holwell, at the United States Courthouse for the Southern District of New York located at 500 Pearl Street, New York, on a date to be determined by the Court, or as soon thereafter as counsel may be heard, for an order, remanding this action to the New York State Supreme Court, and for such other and further relief as the Court may deem just and proper.

Dated: New York, New York  
June 19, 2007

**MICHAEL A. CARDOZO**  
Corporation Counsel of the  
City of New York  
Attorney for Respondent the City  
of New York Police Pension Fund  
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By: /s/  
Keith M. Snow (KS 5259)  
Assistant Corporation Counsel

TO: Marshall E. Bloomfield, Esq.  
Petitioner  
349 East 149<sup>th</sup> Street  
Bronx, New York 10451-5603  
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Mr. Dermott MacShane  
Respondent  
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John Stackpole Groarke, Esq.  
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Clerk of the Court  
Putnam County Supreme Court  
44 Gleneida Avenue  
Carmel, New York 10512

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**DECLARATION OF KEITH  
M. SNOW IN SUPPORT OF  
RESPONDENT PPF'S  
MOTION FOR REMAND TO  
STATE SUPREME COURT**

Civil Action No.:  
07 CV 3934 (RJH)

**KEITH M. SNOW** declares, pursuant to 28 U.S.C. §1746 and under penalty of perjury, that the following is true and correct:

1. I am an Assistant Corporation Counsel in the office of Michael A. Cardozo, Corporation Counsel of the City of New York, attorney for respondent, City of New York Police Pension Fund ("PPF"), in the above-caption action which was removed, pursuant to the Judiciary and Judicial Procedure, 28 U.S.C. §1441(b) from the New York State Supreme Court, Putnam County to the United States District Court, Southern District of New York. This declaration is submitted in support of the PPF's motion to remand this action back to the State Supreme Court. It is based on personal knowledge, and the books and records of the City of New York.

**A. History of the Parties and the Underlying Claim**

2. Marshal E. Bloomfield, Esq. (“petitioner”), a judgment creditor, filed a petition, returnable May 22, 2007, in the New York State Supreme Court, Putnam County (Index No. 969/07) to attach a lien against the pension benefits of Dermot MacShane (“MacShane”) pursuant to 22 NYCRR § 202.16(c)(2). A Copy of the Order to Show Cause and Verified Petition of Marshall E. Bloomfield, Esq. dated May 3, 2007 (“Bloomfield Pet.”) is annexed hereto as Exhibit “A.”

3. MacShane, a former sergeant with the New York City Police Department, retired from the Police Department on January 12, 2007, and is a member of the PPF who is currently receiving pension benefits.

4. Upon information and belief, petitioner represented MacShane in a divorce action against MacShane’s former wife, Judith MacShane, and seeks to attach MacShane’s pension benefits in satisfaction of a lien resulting from unpaid legal fees.

5. In response to the Bloomfield Pet., the PPF filed a cross-motion to dismiss the petition for failure to state a cause of action for which relief may be granted pursuant to New York Civil Practice Law and Rules (“CPLR”) § 3211(a)(7), and in the alternative a demand for transfer of venue from the County of Putnam to the County of New York pursuant to CPLR §§ 503(a), 504(2) and (3), 510(1) and (3), 511(a) and (b). A copy of the PPF’s Cross-Motion and Affirmation in Opposition dated May 16, 2007 is annexed hereto as Exhibit “B.”

6. On May 21, 2007 at approximately 3:45 P.M., without any prior contact, the Office of the Corporation Counsel received a facsimile from Colleran, O’Hara & Mills, L.L.P., attorney for respondent, Fund Office of Local 580 of Architectural and Ornamental Iron Workers (“Local 580”), of a copy of a letter to Justice O’Rourke of the Putnam County Supreme Court, with

Notice of filing of Petition for Removal to the District Court, indicating that the action had been removed to federal court. A copy of the facsimile containing the letter to Justice O'Rourke dated May 21, 2007 and Notice of filing of Petition for Removal to the District Court dated May 21, 2007 is annexed hereto as Exhibit "C."

**B. Mandates for Proper Removal to the Federal District Court**

7. Pursuant to 28 U.S.C. §1441, any civil action of which the Federal District Court has original jurisdiction, may be removed to the District Court.

8. In order for the Federal District Court to retain original jurisdiction, the action must involve diversity of citizenship, pursuant to 28 U.S.C. § 1332 or involve a federal question pursuant to 28 U.S.C. § 1331.

9. Where the state action only asserts state law claims, such as here, removal to federal court is proper only if a substantial federal question exists.

10. A federal question must relate to allegations in the underlying action brought in state court as a "well pleaded complaint" rule and may not relate to a defense.

11. The party removing the case bears the burden of establishing that removal is proper and must obtain the consent of all opposing parties to the underlying state court action.

**C. Removal to the District Court is Improper Due to Lack of Jurisdiction and Consent**

12. Respondent Local 580 alleges that this Court has original jurisdiction pursuant to the Employee Retirement Income Security Act of 1974 ("ERISA") § 206(d)(1) which provides that pension plan benefits may not be assigned or alienated.

13. Pursuant to ERISA § 1003(b)(1), ERISA is inapplicable to the PPF benefits because the PPF is a governmental pension plan.

14. PPF benefits are protected under Article V, § 7 of the New York State Constitution and § 13-264 of the New York City Administrative Code, which states that pensions payable by the PPF shall not be subject to execution, garnishment, attachment, or any other process whatsoever, and shall be unassignable except as specifically provided by statute, and therefore do not involve a federal question.

15. While ERISA may provide a legitimate defense to petitioner's attempt to attach a lien to Local 580's pension benefits, a defense under federal law is insufficient to warrant federal question jurisdiction.

16. The petition is based upon a lien granted in State Supreme Court, and the means by which petitioner seeks to attach the lien, although meritless and subject to dismissal, is nonetheless based on New York State law even assuming the "well pleaded complaint" rule.

17. Finally, Local 580's attempt to remove this proceeding to the Federal District Court without the consent of the PPF, which is a party opposed to the underlying state court action, is improper and constitutes further grounds for remanding the action to State Supreme Court.

18. For the reasons set forth above and in the accompanying memorandum of law, the respondent, PPF, respectfully requests that the Court grant respondent's motion to remand this action to the New York State Supreme Court.

Dated: New York, New York  
June 19, 2007

/s/  
Keith M. Snow (KS 5259)  
Assistant Corporation Counsel

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**NOTICE OF MOTION TO REMAND TO THE NEW YORK  
STATE SUPREME COURT AND DECLARATION IN SUPPORT**

**MICHAEL A. CARDOZO**

*Corporation Counsel of the City of New York*  
Attorney for Defendant  
100 Church Street  
New York, New York 10007-2601

Of Counsel: Keith M. Snow (KS 5259)  
Tel No.: (212) 788-0581

*Service of which is hereby acknowledged:*

*New York, New York* Dated:

Signed: .....

Attorney for: .....